UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, ex rel ROBERT J. DYER Plaintiff v. RAYTHEON COMPANY, Defendant.	)	Civil Action No. 08-10341-DPW

PLAINTIFF-RELATOR'S MOTION PURSUANT TO FED. R. CIV. P. 36(a)(6) TO DETERMINE SUFFICIENCY OF DEFENDANT RAYTHEON COMPANY'S ANSWERS TO REQUEST FOR ADMISSIONS

Now comes the Plaintiff-Relator Robert J. Dyer (hereinafter "Mr. Dyer") and pursuant to Federal Rule of Civil Procedure 36(a)(6) moves that: 1) the Court find that the Defendant Raytheon Company's (hereinafter "Raytheon") responses to Plaintiff's First Request for Admissions, Response Nos. 17 and 19 are not in compliance with Fed. R. Civ. P. 36; and, 2) the Court Order the Plaintiff's First Request for Admissions, Response Nos. 17 and 19 be deemed Admitted.[1]

(I) RELEVANT CASE BACKGROUND

Robert J. Dyer, the Plaintiff-Relator in the subject matter, was a former employee of the Defendant Raytheon Company, who was hired during February 2000 to work in the corporate finance group. Mr. Dyer was specifically hired by Raytheon to develop an enterprise level working capital program within its business units known as the Raytheon Working Capital

[1] As detailed herein, pursuant to Local Rule 37.1 the Plaintiff-Relator, Mr. Dyer has in good faith, conferred with the Defendant Raytheon on two separate occasions in an attempt to resolve or narrow areas of disagreement without Court intervention.

Improvement Program (the "RWIP"). At the time of Mr. Dyer's hiring in February 2000, Raytheon had amassed a significant amount of debt in order to acquire a number of industry competitors in the late 1990's resulting in substantial interest expense that was nearly financially paralyzing the company. The objective of the RWIP was to incentivize Raytheon business managers to make *operational and process improvements* in daily operations resulting in increased cash flow, the reduction of debt, and ultimately, the reduction of interest expense. The program offered incentive compensation bonuses *based upon the achievement of yearly targeted goals as stipulated within the RWIP*. In short, only "Real Improvements" were to be counted toward target achievement goals. (See Document #33; Amended Complaint ¶¶s 15-18.)

Mr. Dyer prepared and drafted PowerPoint presentations, brochures, correspondences and related documents which detailed the parameters, requirements and ground rules of the RWIP. (See Exhibit F—Deposition of Gary W. McCauley at PP. 72-73.) Gary W. McCauley, who was Raytheon's Vice President of Financial Analysis and Mr. Dyer's direct supervisor, was appointed to oversee and direct the development and implementation of the RWIP. (See Exhibit F—Deposition of Gary W. McCauley at PP. 53-57.) All documents or PowerPoint presentations prepared by Mr. Dyer concerning the RWIP were reviewed and approved by Mr. McCauley. (See Exhibit F—Deposition of Gary W. McCauley at PP. 72-74.) Mr. McCauley has worked for Raytheon since 1977 and presently is employed as Vice President of Finance for Raytheon. (See Exhibit F— Deposition of Gary W. McCauley at P. 10.)

After the Management, Development and Compensation Committee of Raytheon's Board of Directors approved the RWIP in March of 2001, Mr. Dyer prepared brochures, PowerPoint presentations and educational and training materials related to the RWIP which clearly detailed the ground rules that only "operational and process improvements" would count toward the attainment of target goals for incentive bonuses. (See Document #33, Amended Complaint ¶¶s 25 and 26.) Such documents included the following language:

- "Only Operational and Process Improvements count toward target achievement..."

  - *See Document #34, Amended Complaint, Exhibit #3 attached to Amended Complaint*.

- "Ground Rules establish that only Operational and Process Improvements count toward target achievement."

  - *See Document #34, Amended Complaint, Exhibit #4. attached to Amended Complaint.*

Raytheon's Chief Financial Officer Frank Caine clearly established in writing in a 2001 Raytheon Working Capital Incentive Plan Brochure prepared for RWIP participants that there was a direct link between incentive employee bonuses to be paid and working capital improvement—i.e. cash produced:

> "We are targeting to remove approximately $470 Million in working capital and save approximately $33 Million in interest. **This is where your payout comes from: as we improve our efficiency, a portion of the interest savings will be used to reward the participants who have achieved this goal**." (Emphasis added.)
>
> - *See Document #34, Amended Complaint, Exhibit #3. attached to Amended Complaint.*

As a major contractor with the Government, the Defendant Raytheon presented the RWIP to the Government noting that it would not only benefit Raytheon but would also benefit the Government by maximizing efficiencies and improving lead times on its *various contracts* with the Government. Relative to same, the Defendant Raytheon required and obtained approval from the Government to charge the Government for the RWIP employee compensation bonuses which were to be charged as "allowable costs" for reimbursement as part of "Overhead Charges" submitted to the Government and *spread over numerous contracts by and between the Defendant*

Raytheon and the Government pursuant to the provisions and regulations of the Federal Acquisition Regulations (FARs) including but not limited to FAR 31.201-3; FAR 31.201-4; and FAR 31.205-6. (See Document #33, Amended Complaint, ¶ 28.)

In or about August of 2001, Gary W. McCauley and the Plaintiff-Relator Mr. Dyer presented an overview with a PowerPoint presentation of the RWIP to Herb Homer, a DCE official for the United States Government. (See Document #33, Amended Complaint, ¶ 27; see also Document #34, Exhibit #5 attached to Amended Complaint.) During this meeting with Herb Homer of DCE, Mr. Homer was informed that Accounting Reclassifications would not be counted or considered toward target achievement goals for the RWIP and that only "operational and process improvements" would be counted. (See Document #33, Amended Complaint, ¶ 27; see also Exhibit G—Deposition of Mr. Dyer at PP. 207-213.)

As a result of the meeting with and presentation to Herb Homer of DCE, Mr. Homer consented to and approved the RWIP. He requested that Raytheon develop a PowerPoint pitch for the Defendant Raytheon's business units to explain and detail the RWIP to their respective local DCAA officers. (See Document #33, Amended Complaint, ¶ 30.) Mr. Dyer prepared these documents and materials and coordinated presentation of these documents and materials to program participants.

When Mr. Dyer became aware in November of 2001 that the C3I Raytheon business unit was attempting to include a significant multi-million dollar Accounting Reclassification (i.e. $23.7 Million) toward computation and consideration of target achievement for incentive bonuses for C3I employees under the RWIP, Mr. Dyer forwarded a broadcast email to all business units on November 30, 2001 noting:

"You will remember back to the inception of the working capital incentive program a set of ground rules that stated **only process improvements would count toward goal achievement**. As a housekeeping item relating to calculating the actual 2001 working capital turnover performance will be to **identify and exclude any reclassifications** made between working capital accounts and other balance sheet accounts during 2001..." (Emphasis added.)

"Again, any **accounting reclassifications** which affect 2000 baseline to the 2001 **actual must be recognized**." (Emphasis added.)

- See Document #33, Amended Complaint ¶¶s 32, 37; see also Document #34, Exhibit #8 to Amended Complaint.

(II) RELEVANT PROCEDURAL BACKGROUND

(1) On May 15, 2012, the Plaintiff-Relator Mr. Dyer served Raytheon with his First Request for Admissions. (See Exhibit A.)

(2) On June 18, 2012, the Defendant Raytheon served its Responses to Mr. Dyer's First Request for Admissions including its responses as follows to Request Nos. 17 and 19:

"**REQUEST FOR ADMISSION NO. 17**

There are no documents prepared by Raytheon and presented to the Government regarding the Raytheon Working Capital Incentive Program which state and/or indicate that "Accounting Reclassifications" would be allowed to be counted toward target achievement goals relative to the payment of incentive compensation bonuses as part of the Raytheon Working Capital Incentive Program.

RESPONSE TO REQUEST FOR ADMISSION NO. 17

After reasonable inquiry, Raytheon is without sufficient knowledge or information to admit or deny.

REQUEST FOR ADMISSION NO. 19

There are no documents prepared by Raytheon and presented to the Government regarding the Raytheon Working Capital Incentive Program which state and/or indicate that Raytheon business units and Raytheon senior management had the right to exercise their discretion to determine which items would be allowed to be counted toward target achievement goals relative to the payment of incentive compensation bonuses as part of the Raytheon Working Capital Incentive Program.

RESPONSE TO REQUEST FOR ADMISSION NO. 19

After reasonable inquiry, Raytheon is without sufficient knowledge or information to admit or deny."

- *See Exhibit B.*

(3) On August 24, 2012 and pursuant to Local Rule 37.1, counsel for the Plaintiff-Relator Mr. Dyer had a conference with counsel for Raytheon concerning specifically the insufficiency of Raytheon's Responses to Request for Admissions Nos. 17 and 19 under Fed. R. Civ. P. 36.

(4) On August 28, 2012, Raytheon served its Supplemental Response to Plaintiff-Relator's Request for Admissions relating to Request for Admissions Nos. 17 and 19 as follows:

"**SPECIFIC OBJECTIONS AND SUPPLEMENTAL RESPONSES TO REQUESTS FOR ADMISSIONS**

REQUEST FOR ADMISSION NO. 17:

There are no documents prepared by Raytheon and presented to the Government regarding the Raytheon Working Capital Incentive Program which state and/or indicate that "Accounting Reclassifications" would be allowed to be counted toward target achievement goals relative to the payment of incentive compensation bonuses as part of the Raytheon Working Capital Incentive Program.

SUPPLEMENTAL RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Raytheon objects to this Request to the extent it seeks to characterize documents that speak for themselves and are the best evidence of their contents. Further responding, as stated in Raytheon's Responses to Requests for Admission No. 12 and 13, Raytheon admits that in or about August 2001, Raytheon personnel participated in an informational briefing with Mr. Herb Homer of the United States Government, and that Exhibit #4 attached to the Requests is a true copy of the presentation prepared for that informational briefing. Raytheon also admits that Exhibit #4 does not state one way or the other whether accounting reclassifications would be allowed to be counted toward target achievement goals for the Raytheon Working Capital Incentive Program.

REQUEST FOR ADMISSION NO. 19:

There are no documents prepared by Raytheon and presented to the Government regarding the Raytheon Working Capital Incentive Program which state and/or indicate that Raytheon business units and Raytheon senior management had the right to exercise their discretion to determine which items would be allowed to be counted toward target achievement goals relative to the payment off incentive compensation bonuses as part of the Raytheon Working Capital Incentive Program.

SUPPLEMENTAL REPSONSE TO REQUEST FOR ADMISSION NO. 19:

Raytheon objects to this Request to the extent it seeks to characterize documents that speak for themselves and are the best evidence of their contents. Further responding, as stated in Raytheon's Responses to Requests for Admission No. 12 and 13, Raytheon admits that in or about August 2001, Raytheon personnel participated in an informational briefing with Mr. Herb Homer of the United States Government, and that Exhibit #4 attached to the Requests is a true copy of the presentation prepared for that informational briefing. Raytheon also admits that Exhibit #4 does not state one way or the other whether Raytheon business units and senior management had the right to exercise discretion to determine whether certain items would be allowed to be counted toward target achievement goals for the Raytheon Working Capital Incentive Program."

- *See Exhibit C*.

(5) On September 4, 2012, counsel for Mr. Dyer forwarded a correspondence to counsel for Raytheon noting that Raytheon's Supplemental Responses to Request for Admissions Nos. 17 and 19 were insufficient under Fed. R. Civ. P. 36. (See Exhibit D.)

(6) On September 6, 2012 counsel for both Parties had a conference pursuant to Local Rule 37.1 regarding the sufficiency of Raytheon's Responses to Request for Admissions Nos. 17 and 19.

(7) On September 8, 2012, counsel for Raytheon notified counsel for Mr. Dyer that Raytheon would not further revise its Supplemental Responses to Requests for Admissions Nos. 17 and 19. (See Exhibit E.)

(III) ARGUMENT

Raytheon's Responses to the Plaintiff-Relator's Request for Admissions No 17 and No. 19 are evasive, non-responsive and insufficient under Fed. R. Civ. P. 36.

In regard to this *Qui Tam* False Claim litigation, the following are significant matters for determination:

(1) Whether the Defendant Raytheon prepared documents and presented documents to the Government regarding the RWIP which state and/or indicate that "Accounting Reclassifications" would be allowed to be counted toward target achievement goals relative to the payment of incentive compensation bonuses as part of the RWIP?

- See Request for Admission No. 17.

And,

(2) Whether the Defendant Raytheon prepared documents and presented documents to the Government regarding the RWIP which state and/or indicate that Raytheon business units

and Raytheon senior management had the right to exercise their discretion to determine which items would be allowed to be counted toward target achievement goals relative to the payment of incentive compensation bonuses as part of the RWIP?

- *See Request for Admission No. 19.*

Both Request No. 17 and Request No. 19 of the Plaintiff-Relator's Request for Admissions were specifically drafted and tailored to address these matters. As detailed hereinabove, Raytheon's initial response and their supplemental response are evasive, non-responsive and insufficient under Fed. R. Civ. P. 36.

Pursuant to Fed. R. Civ. P. 36(a)(1)(A):

> "A party may serve on any other party a written request **to admit** for the purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relative to: (A) **facts**, the application of law to fact, or opinions about either." (Emphasis added.

The subject Request for Admissions No. 17 and No. 19 seek an **admission of fact** relative to the existence or non-existence of specific information within documents generated by Raytheon and presented to the Government concerning the RWIP.

Initially, Raytheon attempted to evade the admissions by claiming, "After reasonable inquiry, Raytheon is without sufficient knowledge or information to admit or deny." (See Exhibit B.) As noted herein, the Plaintiff-Relator Mr. Dyer challenged these Responses as insufficient under Fed. R. Civ. P. and pointed out that: 1) Raytheon was and continues to be the custodian of relevant RWIP documents; and that 2) Gary W. McCauley who continues in the employment of Raytheon, directed the RWIP initiative and reviewed all relevant RWIP documents. (See Exhibit F—Deposition of Gary W. McCauley, PP. 53-57, 72-74.)

Subsequently, the Defendant Raytheon provided Supplemental Responses to Requests for Admissions No. 17 and No. 19 which were once again evasive, non-responsive and insufficient under Fed. R. Civ. P. 36. (See Exhibit C.) In Raytheon's Supplemental Responses, the Defendant Raytheon references *another Request for Admission* propounded by the Plaintiff-Relator Mr. Dyer in which a specific Exhibit *was attached* and Raytheon then attempts to state that the referenced Exhibit relating to *another Request for Admission* "does not state one way or the other" the **factual Admissions** sought in Requests No. 17 and No. 19.

The Defendant Raytheon completely evades responding to the *Admissions of fact presented specifically in Requests No. 17 and No. 19*. Simply stated, the subject documents referenced in the Admissions containing the information specifically identified in the Admissions either *factually* do or do not exist.

Upon reasonable inquiry of information that Raytheon knows or has readily obtained, Raytheon must admit or deny these Admissions. Depositions of present and former employees clearly demonstrate that Raytheon knows and/or is aware of the relevant information responsive to Requests for Admissions No. 17 and No. 19:

- Franklyn A. Caine, former Chief Financial Officer of Raytheon, testified that in regard to the RWIP, he was not aware of any documents that indicated that senior management including himself had the discretion, authority or right to modify or change ground rules or guidelines after they had been established as to what items would or would not be counted towards target achievement goals for incentive bonuses under the RWIP.

  - See Exhibit H—Deposition of Franklyn A. Caine, PP. 80-82.

- Gary McCauley, who directed the RWIP initiative for Raytheon and reviewed all RWIP related documents, testified that there were no documents of which he was aware that were prepared by Raytheon and presented to the Government which: a) allowed the inclusion or consideration of "Accounting Reclassifications" for computation toward achievement target goals; b) provided that senior management had the discretion to change established ground rules as to what could or could not be counted toward target achievement goals.

  - *See Exhibit F—Deposition of Gary W. McCauley, PP. 218-220.*

(IV) CONCLUSION

For all of the reasons stated hereinabove, the Plaintiff-Relator Robert J. Dyer pursuant to Fed. R. Civ. P. 36(a)(6) moves that this Honorable Court:

(1) Find that the Defendant Raytheon's Responses to Plaintiff's First Request for Admissions, Response Nos. 17 and 19 are not in compliance with Fed. R. Civ. P. 36.

(2) Order that Plaintiff's First Request for Admissions Nos. 17 and 19 be deemed Admitted.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), the Plaintiff-Relator Robert J. Dyer requests a Hearing on the subject Motion of the Plaintiff-Relator.

Respectfully Submitted,
United States of America, Ex Rel.
Robert J. Dyer
By Relator's Attorney,

Date: September 13, 2012

/s/ Robert C. Autieri
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LOCAL RULE 7.1(A)(2) CERTIFICATION
AND CERTIFICATE OF SERVICE

I, Robert C. Autieri, hereby certify that counsel for the Plaintiff-Relator Robert J. Dyer, conferred with opposing counsel in an effort to resolve or narrow the issues presented in this Motion prior to the filing of the Motion of the Plaintiff-Relator Robert J. Dyer to Determine Sufficiency of Defendant Raytheon Company's Answers to Requests for Admissions.

I further certify that this document, the attached Motion filed through the ECF system will be sent electronically to the registered participants as indicated on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on September 13, 2012.

/s/ Robert C. Autieri

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